The Solicitors' Journal

Vol. 97 March 21, 1953 No. 12

CURRENT TOPICS

Mr. L. G. H. Horton-Smith

THE late LIONEL GRAHAM HORTON HORTON-SMITH, who died at the age of 81 on 9th March, was a lawyer whose activities and attainments almost to the end of his long life deserve special notice. As his father was a King's Counsel and his mother was the daughter of John Baily, Q.C., it was not unexpected that after a school and university career at Marlborough and St. John's College, Cambridge, of high distinction, he chose the Bar as his profession. Among his academic acquisitions were a double first in classics and philology, a M'Mahon law scholarship and a fellowship. He attained success in general practice on the South-Eastern Circuit, and for ten years he was a member of the examination board of the Inns of Court. He was also retained as counsel by the Union of Post Office Workers for about thirty years. The list of his publications on literary, historical, biographical and naval subjects illustrates the breadth of his interests and the depth of his enthusiasms. He was a not infrequent contributor to the columns of this journal. His was an unforgettable personality, and he exercised his great charm with complete lack of self-consciousness or affectation.

Judges' Salary Increases

THE proposed increases in the salaries of Her Majesty's judges, announced by the introduction of the Judges' Remuneration Bill on 13th March, is not in the same class as the inflationary wage increases to which we have become habituated for some years past. No puisne judge of England and Wales has had a salary increase since 1832. The advantages of a secured salary and a pension can be tempting, but the recent migration from the Bar to industry of persons who might well have adorned the Bench shows that the inducements to successful barristers to undertake judicial office are not sufficient. The additional allowance is £1,000 a year, free of income tax and sur-tax. It is still not comparable to the highest rewards of the Bar, but perhaps in our straitened circumstances it is the best that can be effected. The number of judges to receive this increase is seventy-nine. It is not proposed to make any alterations in the pension arrangements, including widows' and children's benefits.

Antecedent History of Convicted Persons

IN Home Office Circular No. 52/53 it is stated that, in view of the remarks made by the Lord Chief Justice in the case of *R.* v. *Crabtree* (1952), 36 Cr. App. R. 161; 96 SOL. J. 765, further consideration has been given to the terms of Home Office Circular No. 187/1950, in which it was suggested that information which the police are prepared to give about an offender's general reputation and associates should not appear on the proof in the possession of the officer giving evidence. (The contents of that circular were more fully described at 95 SOL. J. 193: and see 95 SOL. J. 406.) The Secretary of State has now suggested to chief officers of police that the proof should be prepared in two parts, one containing the information suggested in Home Office Circular No. 187/1950 and the other containing such information as the officer is prepared to give about the

CONTENTS

prisoner's general reputation and associates; and that, where counsel for the Crown proposes to ask that the latter information should be given to the court, copies of both parts of the proof should be given after conviction to the court and to the defence.

Additional Sources of Local Authority Revenue

A REPORT of a local government research working party on the provision of additional sources of revenue for local authorities through the rating of industry and agriculture, taxation of land values and the transfer to local authorities of the proceeds of entertainments tax, has been published by the Incorporated Accountants' Research Committee and the Institute of Municipal Treasurers and Accountants in their respective journals. The report states that the general case in favour of additional sources of local revenue is strengthened at the moment by the grave weaknesses in the valuation lists upon which a rapidly growing volume of local rates is levied, by the intractability of the valuation system to reform, and by the high degree of dependence of the equalisation grant upon the valuation list. The de-rating of industry and agriculture should be abolished. The abandonment of the development charge, the report states, affords a welcome opportunity for re-examining the claim of local authorities to a land tax. The report also recommends transfer to local authorities of the right to collect entertainments duty, the annual yield of which was about £45m., or about 1 per cent. of the entire central government revenue. These three proposals would yield a minimum of £105m. a year, the exact total depending on the yield of the land tax adopted. Assuming the total yield to be £150m., then local finances could be considerably and advantageously reorganised. Local rates might immediately be reduced by about £100m. and the specific grants by about £100m., and the equalisation grant increased by about £50m.

Strangeways, Manchester

IT is said that the late Lord Justice MacKinnon regarded it as Hitler's blackest crime that he laid waste the Temple and spared that Victorian monstrosity, the Law Courts. Perhaps some amends were made, inasmuch as another such monstrosity —the Manchester Assize Courts—was very seriously damaged. The courts centred in Manchester—assize court, stipendiary's court and county court—are widely scattered. The assize court is immediately in front of Strangeways Gaol and is situated in a most insalubrious part of the city. (In actual fact it is outside the city boundaries and in the neighbouring borough of Salford.) In 1941 the various local authorities decided to house all the courts in a single new building to be erected in the more central Deansgate area of Manchester. This proposal is now likely to be dropped in favour of reconstruction of the old assize courts. It is difficult to see what justification there can be for this. Restoration of the cathedral-like shell, as it now is, cannot cost much less than a new building. The old courts are inaccessible, approached by roads the reverse of impressive, and the present distribution of courts seems likely to be perpetuated. London lawyers must continue, presumably, to suffer the inconveniences of the Law Courts, but this makes them feel more keenly, if anything, the disastrous nature of the proposed restoration of Strangeways. It is to be hoped that this matter will be carefully reconsidered before any irrevocable steps are taken.

Chester and North Wales Incorporated Law Society

THE annual report of the committee of the Chester and North Wales Incorporated Law Society, which was presented to the sixty-eighth annual meeting on 23rd March, 1953, shows that the society now has 269 members of whom 44 practise in Chester, 63 in Cheshire and 162 in North Wales. This is the highest number ever recorded. Some fifteen towns and districts in Cheshire and thirty-three in North Wales contribute to the membership. The committee, on the representations of a member, recommended to The Law Society that photostat copies of wills written in Welsh should be included in the grant of probate in addition to the English translation. The Law Society supported the recommendation and it has been accepted by the President of the Probate, Divorce and Admiralty Division with the qualifications that the appropriate application must be made when probate is applied for and that the copy of the Welsh original will not be included where there is any physical impediment. This is regarded as a distinct success for the society. The committee have also recommended that Welsh be included as an optional subject for The Law Society's Preliminary Examination. The matter is understood to be under consideration by The Law Society. The society has expressed strong views against a proposal that the district probate registries at Bangor and Chester should be closed. It was felt that valuable local assistance in probate matters would be lost, and that delay would be caused by an excessive amount of work being thrown on to the Principal Probate Registry. The committee has had under consideration the system of minimum conveyancing charges. It is known that in some parts of the society's area, notably in Chester, the prevailing charge in conveyancing matters is the authorised scale charge, and most members only reduce their charges to the minimum scale of 85 per cent. in special circumstances, whereas in other areas the prevailing charge is believed to be 85 per cent. of the authorised scale, there being no room for a reduction in special cases unless application is made for a dispensation. The committee feel that the time has come when members throughout the society's area should adopt the full authorised scale fee as the prevailing charge and should only resort to the minimum charge, at their discretion, when they feel that special considerations justify such reduction. This does not, of course, modify the scale adopted by the society in general meeting, which has always been intended to be a minimum and not a prevailing, scale.

Road Safety

AT a conference in London, on 13th March, of road users' and other organisations, it was agreed to ask the Minister of Transport to receive a deputation to present proposals for grading outstanding road safety recommendations so that they can be suitable for inclusion in the Government's proposed Road Traffic Bill—intensification of research into road accidents and a considerable increase in parking grounds in the larger towns and cities, and of police motor patrols and adult school patrols. Proposals will also be made that the Minister of Transport should investigate the need for an improved standard of, and more uniformity in, street lighting; that all motor vehicles should be obliged to have adequate rear lights and there should be special propaganda urging that in badly lighted built-up areas all drivers use dipped headlights. The few local authorities without a road safety committee should be asked to form one. There should be more road safety broadcasts and television programmes, and there ought to be a weekly bulletin similar to that issued for national savings. Other recommendations are that the Minister of Transport should be asked to have failure to conform to the signal of a police officer and disregard of guard rails made legal offences for pedestrians, and that pedestrians should be taught the proper use of crossings and made to realise the stopping distances required by vehicles.

Taxation

ESTATE DUTY ON POLICIES OF ASSURANCE—I

ONE of the less easy branches of the law relating to estate duty is that concerning duty chargeable upon policies of assurance. In different circumstances duty may be chargeable under the Finance Act, 1894, ss. 1, 2 (1) (*a*), (*c*) or (*d*), and as will be seen an attempt has been made to drag s. 2 (1) (*b*) into the matter. Some of the questions have recently been discussed and decided in *Re D'Avigdor-Goldsmid* [1951] Ch. 321 (Vaisey, J.); [1951] Ch. 1038 (C.A.), and (*sub nom. D'Avigdor-Goldsmid* v. *I.R.C.*) [1953] 2 W.L.R. 372 (H.L.); *ante*, p. 130, which case was concerned with liability under s. 2 (1) (*c*) and (*d*), and in *Re Brassey's Deed of Appointment* [1951] Ch. 351 (Romer, J.); [1951] Ch. 979 (C.A.) and (*sub nom. Coutts and Co.* v. *I.R.C.*) [1953] 2 W.L.R. 364 (H.L.); *ante*, p. 130, which case was concerned with a possible liability under s. 2 (1) (*b*). As not infrequently happens when difficult questions reach the House of Lords, the law is not only settled and clarified but to a certain degree simplified since their lordships can dissent from unsatisfactory cases which bind lower courts. It is thought that the matter will be clearer if the two latest decisions are dealt with in the course of a general survey of the whole matter. It will be convenient to consider it under the heads of the different charging sections of the 1894 Act.

Section 1: *Property Passing*

A charge will arise under s. 1 where the deceased was, at the time of his death, the beneficial owner of a policy on the life of another. Such a policy is not an interest in expectancy and the figure upon which duty is leviable is the market value of the policy at the date of death. Be it remembered that the market value of a policy is not the same thing as the surrender value: the latter is fixed on the assumption that the assured remains in good health and, in the case of "with-profits" policies, ignores the possibility of future bonuses. The market value, therefore, will usually be greater and this is particularly so if the life assured is not a good one.

Section 2 (1) (*a*): *Competency to Dispose*

It is under this head that duty is attracted in the ordinary case of a policy effected by the deceased on his own life and forming part of his free estate. The deceased is at all times up to his death competent to dispose of the policy or its fruits either *inter vivos* or by will and the duty is charged upon whatever sum is receivable from the assurer. It may be, of course, that at the time of the death the policy moneys are not payable to the personal representative of the deceased but to someone else—perhaps to his wife or to his children: in such a case there is no charge under s. 2 (1) (*a*) but instead the matter falls to be considered under s. 2 (1) (*c*) or (*d*).

Furthermore, it may be that there is a policy on the life of the deceased which was not effected by him at all. Such will be the case where someone with an insurable interest in the deceased's life assures that life on his own behalf and for his own benefit. Thus one partner may insure the life of another and in that case no duty will be attracted on the death of the life assured. But great care must be taken in applying this principle in many cases and the provisions of s. 30 of the Finance Act, 1939, and of s. 76 of the Finance Act, 1948, must be borne in mind. Both these sections are considered below. The general effect of them is that if the policy is effected by one who had derived property from the deceased then, except as provided, the deceased shall be deemed to have purchased or provided the policy for the purposes of s. 2 (1) (*d*), and if the premiums on the policy were paid by virtue of a "settlement made by the deceased" then they may be regarded as having been paid by the deceased for the purposes of s. 2 (1) (*c*). Thus, for example, if a donor makes a substantial gift *inter vivos* and the donee effects a policy of assurance on the life of the donor (to meet possible estate duty) there will be no liability under s. 2 (1) (*a*) but it will be necessary to consider whether or not there is liability under s. 2 (1) (*c*) or (*d*).

Section 2 (1) (*c*): *Gifts Inter Vivos*

It hardly needs to be stated that if a person has a policy either on his own life or on another's life and if he assigns it to a donee there is a liability for estate duty should the donor die within five years. If the policy is on the life of another, duty is chargeable upon its market value at the date of death of the donor. If it is on the donor's own life, duty will be charged on the amount of the policy moneys payable on the death.

Section 2 (1) (*c*): *Policies Kept up for a Donee*

It will be recalled that s. 2 (1) (*c*) proceeds by incorporating the Customs and Inland Revenue Act, 1881, s. 38, as amended by the Customs and Inland Revenue Act, 1889, s. 11, and by varying those provisions by omitting certain words therefrom. The claim upon policies kept up for a donee rests upon the provisions of the 1889 Act:—

> "The charge under the said section shall extend to money received under a policy of insurance effected by any person . . . on his life where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him where the policy is partly kept up by him for such benefit."

This provision must be examined in some detail.

Effected by the deceased.—The first thing which the Crown must show is that the policy was, in the first place, "effected" by the deceased. This is not free from difficulties. In *Re Oakes* [1951] Ch. 156 the deceased signed the proposal forms for the policy but his father-in-law paid the first few premiums and it was held that the policy had been effected by the deceased. On the other hand, it is idle to sign proposal forms and do no more since there will be no cover until the first premium is paid; so the policy only becomes effective on the payment of such premium. It may well be, therefore, that the deceased "effected" the policy if he either made the contract with the assurer or, such a contract having been made by another, paid the first premium.

Kept up by the deceased.—The second requirement is that the policy must be "kept up" by the deceased. The normal way of "keeping up" a policy is by paying the annual premiums as they fall due and it appears that it is no less a "keeping up" if the policy is at some stage fully paid up by the payment of a lump sum: such a payment is regarded merely as a prepayment of the future annual premiums (*Re Oakes*, *supra*). What does appear to be difficult and uncertain is the application of this head of charge to single premium policies. See *Barclays Bank, Ltd.* v. *A.-G.* [1944] A.C. 372, *per* Lord Wright at p. 379.

In that case it was decided that where policies had been kept up by trustees out of funds settled by the deceased they

had not been kept up by the deceased so as to bring them within the section. This received statutory attention in the Finance Act, 1948, s. 76, which provided that, with certain exceptions, a policy effected under a settlement made by the deceased should be deemed to have been effected by him and that premiums paid out of funds settled by the deceased should be deemed to have been paid by him. The definition of a settlement is in the widest possible terms: it is the same as that in the Finance Act, 1938, s. 41 (now Income Tax Act, 1952, s. 403), and would appear to extend to an outright absolute gift. (See *Thomas* v. *Marshall* [1952] 1 T.L.R. 1419—which is under appeal to the House of Lords.)

For the benefit of a donee.—Here one reaches one of the matters dealt with in *Re D'Avigdor-Goldsmid, supra*, but before considering the facts of that case it will be well to look first at *Lord Advocate* v. *Fleming* [1897] A.C. 145. That case is conveniently summarised by Sir Raymond Evershed, M.R., at [1951] Ch. 1051, in these terms:—

> "In that case a father having taken out a policy on his own life and paid a certain number of premiums then assigned the policy absolutely to his daughter who, from the date of the assignment, paid out of her own resources all subsequent premiums; and it was held not legitimate to regard the premiums payable before the assignment as a keeping up of the policy for the daughter's benefit for during that period the father had no thought of any interest but his own—no thought not only of the daughter as a donee but of any donee at all—see *per* Lord Herschell at [1897] A.C. 154."

That is to say, if a man effects a policy on his own life for his own benefit and pays the premiums on it he is not at that stage keeping it up for a donee but for himself.

Rather simplified, the facts of *Re D'Avigdor-Goldsmid* were as follows: In 1904 the deceased, then a bachelor, took out a policy on his own life: in 1907 he brought the policy together with other property into his ante-nuptial marriage settlement, the deceased covenanting to pay the premiums on the policy—which he did so long as he had any interest in it: between 1907 and 1934 there were various dispositions, notably a re-settlement in 1930, but finally, in 1934, the deceased and his son, in exercise of a power of appointment, appointed the policy, together with some of the other property brought in in 1907, to the son absolutely. From that moment the son was absolutely entitled to the policy for his own use and from that moment the premiums previously paid by the deceased were paid by the son. The settlor died in 1940 and the son received the policy moneys. The Crown claimed that the deceased had paid twenty-seven premiums (1908 to 1934) and the son six premiums (1935 to 1940) so that 27/33rds of the policy moneys were chargeable to duty. The four premiums paid in 1904–5–6 and 7 were ruled out by *Lord Advocate* v. *Fleming, supra*.

Vaisey, J. ([1951] Ch. 321), was impressed by *Lord Advocate* v. *Fleming, supra*, and he held, in effect, that a policy was only kept up for a donee within the section if it could be shown that it was kept up for the particular donee who in the result obtained the benefit of it. Thus, at p. 330:—

> "I have come to the conclusion that the donee referred to in s. 11 of the Act of 1889 is the ultimate donee, that reference to donee is not properly applicable to a series of donees and that the word only properly signifies the final beneficiary and owner of the right of property in question."

The Court of Appeal actually decided the case on another ground and so did not consider it necessary to express a concluded opinion on those views: nevertheless in the judgment of the court delivered by Sir Raymond Evershed, M.R., it appears tolerably plain that they leaned heavily to the view that the donee contemplated by the section was apt to comprehend a composite class of donees. Mr. Beattie in his recently published book (p. 59) considers that the Court of Appeal expressed no view on the matter, but at [1951] Ch., pp. 1051–52, the judgment proceeds:—

> "... from 1907 onwards the deceased must have been keeping up the policy for the benefit of some donee in the sense of some person who would ultimately become entitled to the moneys as a result of his having parted irrevocably with all interest in the policy as part of the settlement of 1907. As at present advised we agree with the view expressed by Wrottesley, J., in *A.-G.* v. *Barclays Bank, Ltd.* [1943] 1 All E.R. 181 (a case not noticed by Vaisey, J., in his judgment) that the word 'donee' is apt to comprehend a number of persons entitled to successive interests ... Were it otherwise surprising and capricious results would appear to follow."

True, that view is perhaps a *dictum*, but it is one likely to be followed both at first instance and in the Court of Appeal.

However, in the event, the Court of Appeal upheld the decision of Vaisey, J., on this branch of the case for a different reason. It will be remembered that the policy originally ceased to be in the beneficial ownership of the deceased when he assigned it to the trustees of his ante-nuptial marriage settlement. It was admitted by the Crown that the son took under and by virtue of that settlement and it was therefore held that, since he was within the marriage consideration, he was not a donee at all so that s. 2 (1) (*c*) could not apply. When the case went to the House of Lords the Crown did not appeal on this head.

Whether nominee or assignee.—A person may be interested as donee of a policy, assuming that he is a donee and had not obtained his interest for consideration either good or valuable, either by assignment or by his being the person from the start nominated to receive the policy moneys. It must be remembered in this connection that in England (but not in Scotland) a person not a party to a contract cannot enforce it, although it was made exclusively for his benefit. In most cases, however, in which the deceased takes out a policy on his life for the benefit of others those others will be within the scope of the Married Women's Property Act, 1882, s. 11, so that the designated beneficiaries are validly entitled and are donees within s. 2 (1) (*b*) of the 1894 Act unless, as in *Re D'Avigdor-Goldsmid*, the policy was or formed part of an ante-nuptial marriage settlement and all the beneficiaries were within the marriage consideration.

In the case, therefore, of a policy under the 1882 Act which did not constitute or form part of such a settlement, where the deceased paid some or all of the premiums, the policy moneys received on his death would attract duty under s. 2 (1) (*c*) to the extent to which he had paid the premiums. Of course, if the policy was so drawn that there never was any possibility of a resulting trust for the deceased they would be assessed as an estate by themselves. But where the policy formed part of an ante-nuptial settlement and all the beneficiaries were within the marriage consideration no duty at all will be payable under s. 2 (1) (*c*).

Partly kept up.—Where a policy has been partly kept up by the deceased, so that he has paid some of the premiums and the donee or some other person has paid some, and where the section is otherwise satisfied, then it was made clear in *Lord Advocate* v. *Inzievar Estates* [1938] A.C. 402, that duty is chargeable on the death on part of the policy

moneys in the proportion in which the premiums paid by the deceased after the section has begun to apply bear to the total premiums paid after the section has begun to apply. Where, as in *Re Oakes, supra*, the donees are nominees from the first then, of course, the section applies from the start: but where there has been an assignment there has only been a donee or class of donees from that date and premiums paid whilst the deceased was beneficially entitled are ignored.

G. B. G.

Costs

THE NEW REMUNERATION ORDERS: SOME MISCELLANEOUS POINTS

WE have now dealt fully with the alterations effected by the new remuneration orders to the method of charging for non-contentious work other than completed conveyancing transactions, and we now propose considering the remainder of the provisions of these new orders.

So far as the scale costs in respect of the sale and purchase of unregistered land are concerned, there is no alteration to the remuneration until the price exceeds £10,000, when the scale fee is increased by 2s. 6d. per cent., and the £100,000 limit is removed. The increase effected is thus of a limited nature.

The new sub-para. (*b*) to r. 1 of Sched. I, Pt. 1, really gives formal effect to what has normally been carried out in the past without any such authority. The precise wording should be particularly noticed. Where a number of properties are sold by private treaty there are three requirements which *must* be fulfilled before two or more scale fees are chargeable. Thus, there must be, in respect of each property, (*a*) a separate title investigated, (*b*) a separate price, and (*c*) a separate conveyance. Unless all of these three conditions are satisfied only one scale charge can be made in respect of the whole of the transactions, based on the aggregate price for the whole.

Take the case of an estate which is divided up and sold to a number of different purchasers. There is only one title to deduce, but there is a separate purchase price in respect of each part conveyed, and, of course, a separate conveyance for each purchaser. The vendor's solicitor's costs will, however, be based on the aggregate purchase price of the whole of the properties, because all three of the conditions mentioned in sub-para. (*b*) of r. 1, *supra*, have not been fulfilled, namely, the separate properties sold are not held under separate titles.

This rule applies, as stated, in a case where the property is sold by private treaty. Where a property is sold by auction rather different principles will apply, for sub-para. (*a*) of r. 1, which is, in effect, the same as the old r. 1, provides for separate deducing fees in respect of each lot of property, except where the property is held under the same title, is divided into lots for the convenience of sale, and the same purchaser buys several lots and takes one conveyance and only one abstract is delivered, in which case the scale deducing fee is to be on the aggregate purchase price.

In the above example, if the properties into which the estate was divided were sold not by private treaty but by auction, it seems that the scale deducing fee would be based on the price of the separate properties, because the conditions of sub-para. (*a*) of r. 1 have not been satisfied, namely, the purchaser of the different properties was not the "same purchaser." The reason for this distinction between the charges for properties sold by auction and properties sold by private treaty is obscure, for, so far as deducing the title is concerned, there is no difference in the vendor's solicitor's work however the property is sold.

It has been noticed that there is no longer a negotiating scale fee under Pt. 1 of Sched. I, and the solicitor who negotiates a sale or purchase of property will now be remunerated according to Sched. II on a fair and reasonable basis (see the amended para. 2 (*c*) of the Solicitors Remuneration Order, 1883). Under the old r. 2 of Sched. I, Pt. 1, where a property was offered for sale but was bought in by the vendor and the solicitor afterwards negotiated a sale by private treaty, the solicitor would get the "abortive auction" fee on the reserve price, plus one-half of the scale negotiation fee. Now, however, he is to get a fair and reasonable fee under Sched. II in respect of the negotiations. Will this fair and reasonable fee in these circumstances be one-half of the fair and reasonable fee that he would have had if there had been no abortive auction prior to his negotiating the sale? Presumably not, for a previous abortive auction can hardly affect the question of what is a fair and reasonable fee for the subsequent negotiation of a sale.

The mortgagee's solicitor's scale fees for negotiating a loan on mortgage have now gone up by 3s. 9d. per £100 all along the line, with one-half of that increase for the mortgagor's solicitor. Again, the £100,000 limit is now removed, so that whatever the amount of the loan the solicitor will receive his appropriate remuneration.

The new r. 11 of Sched. I, Pt. 1, has been recast to allow for the fact that there is no longer any scale negotiating fee for the sale and purchase of property; otherwise it is in much the same terms and has the same effect as the old r. 11. Under the old r. 11, and now also under the new rule, the mortgagee's solicitor is entitled to the scale negotiating fee only where he arranges and obtains the loan from a person for whom he acts. Precisely what this means has never been judicially decided, but it is assumed that it means that the mortgagee's solicitor's negotiating fee is chargeable only where the solicitor acts for the lender in regard to the mortgage and can, in addition to the scale negotiating fee, charge the appropriate fee for investigating the title and preparing the mortgage. It is not thought that the negotiating fee can be charged only where the solicitor regularly acts for the lender, for this is not what the rule says, and it would have been quite easy to say so if that is what was meant. In short, the solicitor will not get the scale negotiating fee where he merely negotiates the loan but does not act for the mortgagee in investigating the title and preparing the mortgage, and, presumably, in such a case he will be remunerated according to Sched. II so far as the negotiations are concerned.

The solicitor for the mortgagor, however, is in a different position, and he will be entitled to the scale negotiating fee, and, indeed, in the absence of election under r. 6, he will be bound to charge the scale negotiating fee, even if he does not act for the mortgagor. Thus, if the solicitor is approached and is asked to find a sum on loan with the security of a mortgage then, whether or not he acts for the borrower, he will get the scale negotiating fee.

It will be borne in mind, however, that the scale negotiating fee, unlike the scale fee for the preparation of the mortgage,

is chargeable whatever the security for the loan. Thus, a solicitor may be asked to find a loan on the security of life policies. If he does and negotiates the loan then he will get the scale negotiating fee, although he may have nothing to do with the actual charging of the life policies. On the other hand, if the solicitor is asked to find an investment for a sum of money and negotiates on behalf of the lender a loan of that sum on the security of life policies, then he will not get the scale negotiating fee unless he actually acts for the lender.

It will be noticed that the direction in r. 11 that the scale shall not apply to sales under the Lands Clauses Consolidation Act or any other private or public Act under which the vendor's costs are to be paid by the purchaser remains. This means that the vendor's costs are to be computed according to Sched. II on a fair and reasonable basis. A good many of these compulsory acquisitions arise in respect of property of low value, and hitherto Sched. II has proved to be much more advantageous to the solicitor in many cases than the scale charge. In the past, however, it has always been possible to produce a detailed bill to support the Sched. II charge, and it remains to be seen how the Sched. II charge, computed on the new basis, will work out in practice in these cases.

The new r. 13 of Sched. I, Pt. 1, gives statutory authority to what had normally been done in the past, and it also buries a bone of contention, for there was a school of thought which considered that the scale fee for deducing and investigating title was not applicable in a case of an assignment of a lease where the only document of title to be investigated was the head-lease itself. The only real ground for the argument that the scale fee was not applicable was that the work in investigating the title and deducing the title that was being assigned was of a very trifling nature in such a case, but this argument did not rest on very substantial ground, for the principle underlying the scale remuneration in respect of sales and purchases is that the solicitor shall accept the rough with the smooth, and, as Russell, J., observed in the case of *Re Coward, Chance & Co.* [1928] Ch. 379, "this happens to be one of the smooth bits."

There is an all-round increase in the scale of fees in respect of transactions affecting registered land, but little alteration to the rules. There is, however, one important amendment, and that is the new paragraph lettered (*l*) in the amended para. 1 of the Order of 1925. This provides that when a solicitor acts for the purchaser of registered land, and also for a person taking a charge thereon, he will be entitled to charge the full scale fee for the transfer on sale, and one-half of the scale charge on the mortgage up to £5,000, and one-quarter of the scale charge on the excess. This brings the rules with regard to scale charges in respect of registered and unregistered land into line.

J. L. R. R.

A Conveyancer's Diary

RESTRICTED POWERS OF ADVANCEMENT

In *Re Williams' Will Trusts* [1953] 2 W.L.R. 418 a testator directed that a fund should be held upon protective trusts for the benefit of his son, J. I. W., for life with various remainders over. The testator's will contained an advancement clause whereunder the trustees were empowered, notwithstanding the trust previously declared, in their discretion to raise and pay to J. I. W. any part of the fund not exceeding 25 per cent. "for the purpose of starting my said son in business or for the advancement of any business with which he may be concerned." J. I. W. qualified as a doctor after the testator died, and after the war, in which he served in the Royal Army Medical Corps, he applied to the trustees to exercise their powers under this advancement clause to purchase a house to be used by him for the purpose of his practice in the medical profession, or partly for that purpose and partly as a residence. It appeared from the evidence filed on behalf of the application to the court that despite the revolution in medical practice brought about by the National Health Service Act, 1946, and the abolition of the sale of medical practitioners' practices which that Act affected, it is still highly advantageous for a medical practitioner to be able to acquire premises in which there is a surgery in which a practice can be carried on, or where the practitioner can reside and make himself easily available for practice. This is, apparently, particularly so where a practitioner desires to make some arrangement whereby he can succeed to the existing practice of another practitioner; such an arrangement may depend on the ability of the potential successor to purchase the premises where his predecessor's practice was carried on.

The principal question raised in this case was whether the word "business" in the advancement clause included the profession of medicine, and this question Danckwerts, J., had little hesitation in answering in the affirmative. Although this particular point had never, apparently, been before the court on a previous occasion, the general problem of which it is a particular example had often been discussed and considered judicially. Thus in *Smith* v. *Anderson* (1880), 15 Ch. D. 247, Sir George Jessel, M.R., after referring to one or two dictionary definitions of the word business, expressed the opinion that anything which occupies the time and attention and labour of a man for the purposes of profit is business, and that the word was one of extensive use and wide signification. More recently, in *Manchester Corporation* v. *Buttle* [1929] 2 Ch. 390 (a decision on a section of a local waterworks act which provided different tariffs or rates for the supply of water to dwelling-houses on the one hand and premises used for business on the other hand), Eve, J., held that the residence of a dentist where he practised the profession of dentistry was a dwelling-house used in part for business purposes, and that the plaintiff corporation was, therefore, entitled to demand payment for a supply of water on that basis. On these and other authorities it was, therefore, clear that the word "business" in the advancement clause in the present case was wide enough to include any profession, and so included the medical profession.

The life interest of J. I. W. in this case was subject to protective trusts, and doubtless the testator had some good reason for restricting the advancement clause in the way that he did. Otherwise, since the will was made after 1925 and the fund in question was a personalty fund, the statutory power of advancement would have applied; and had the statutory power applied there would have been no difficulty in raising and applying the amount required out of the fund for the purpose for which J. I. W. desired that it should be applied: such cases as *Re Garrett* [1934] Ch. 477 show that the construction which the statutory power has received in the courts is a liberal one. My own view is that it is seldom desirable to restrict the operation of the statutory power, either expressly, or by implication as when the inclusion of

an express power in different terms excludes the statutory power; if a settlor is bent on restricting the power, he should be advised that the best method, or at least the one that gives least trouble in practice, is that of limiting the *quantum* of the permitted advancement, e.g., by reducing the maximum provided by statute (one-half of the beneficiaries' share, present or presumptive) to one quarter. All other methods of restricting the trustees' power involve a considerable risk of an eventual application to the court, and it is by no means certain that the result of such an application will be favourable to the beneficiary concerned.

This risk is well illustrated by another fairly recent case, which was not, as it happens, mentioned in *Re Williams' Will Trusts*, either in argument or in the judgment: *Re Craven's Estate* (No. 2) [1937] Ch. 431. In that case a codicil to the testatrix's will contained an express power of advancement of which the principal part followed to some extent the language of the statutory power, i.e., it gave the trustee power to pay or apply the whole or any part of a fund in which a beneficiary was by the will given a protected life interest for the advancement or benefit of the beneficiary. But the power was subject to the proviso that (in effect) it could only be exercised for one or more of four specified purposes, one such purpose being the purchase of a business or a share in a business. The beneficiary in question desired to establish himself as an underwriter at Lloyd's and for that purpose requested the trustee to exercise the power and provide the funds necessary to enable him to carry out his desire. But Farwell, J., held that this was not a purpose for which the power could be exercised: if a person desires to become an underwriter at Lloyd's he must provide and deposit with the trustees of Lloyd's certain funds, but in the learned judge's view it was a misuse of language to describe such a deposit as the purchase of a business.

This decision is, of course, impeccable as a decision on a point of construction, but as a solution of a practical problem it was, as it turned out, absurd. The evidence showed that the testatrix in her lifetime realised that the beneficiary (who was her son) was anxious to become a member of Lloyd's and she had, indeed, offered to find the necessary capital sum to enable him to do so; but the son, realising that it would mean a sacrifice of income on his mother's part, would not agree to that. The testatrix therefore made a codicil to her will containing the unfortunate advancement clause, which, there was no doubt, she regarded as apt for the purpose which she and her son had discussed between them. But all these were matters which, in construing the clause in question, the court was bound to disregard. There cannot be many practitioners who, after reading this decision, will not share my view that to tamper with advancement powers, except to restrict (or enlarge) the amount which is thereby authorised to be raised, may easily work the most appalling injustice.

Writing in this Diary a year ago on mortgagees' proceedings for possession I drew attention to what seemed to me to be a misleading note in the *Annual Practice* (see (1952), 96 Sol. J. 113). The note is one to Ord. 55, r. 5A, and it is in the following terms: "In proceedings claiming possession [i.e., by a mortgagee], as soon as the summons is issued, the applicant is deemed to have re-entered and the tenancy, year by year, as in the attornment clause, becomes a tenancy at will, and as soon as the summons is served, the tenancy at will is determined by the claim for possession. Therefore it is not necessary for the applicants to prove they had given a notice to quit determining the tenancy from year to year (*Woolwich Equitable Building Society* v. *Preston* [1938] 1 Ch. 129)." I expressed my opinion that *Preston's* case did not support anything like so wide a proposition as this, and that it is only where the mortgagee seeking possession is at liberty to re-enter at the time when proceedings for possession are commenced that he can take advantage of that case. A mortgagee has such liberty under an attornment clause in the usual form, such as that which was considered in *Preston's* case, which gives the mortgagee express power, in certain circumstances, to re-enter and determine the attornment tenancy without previous notice, and the same position exists where, whatever the precise language of the attornment clause, its effect is to create a tenancy at will in favour of the mortgagor. But although most attornment clauses give the mortgagee, either expressly or by implication, an immediate power of re-entry on the mortgagor's default, some attornment clauses in current use are drawn in such a way as to create a tenancy which, irrespective of whether the mortgagor is in default, can only be determined by proper notice, and in such cases, I pointed out, the only way in which the attornment tenancy can properly be determined is by giving the appropriate notice to expire before proceedings are commenced. In such cases *Preston's* case is irrelevant and of no assistance, and the note in the *Annual Practice* which purports to be based on that case is equally irrelevant and of no assistance.

This view has now been confirmed by the decision in *Hinckley & Country Building Society* v. *Henty* [1953] 1 W.L.R. 352, and those who have not already marked the passage in the *Annual Practice* which contains this somewhat misleading statement (p. 1128 in the 1952 edition) as of doubtful application universally, should do so now.

"A B C"

Landlord and Tenant Notebook

CONTROL: JOINT TENANCY PROBLEMS

Part of a footnote on p. 172 of the current edition of Mr. R. E. Megarry's "The Rent Acts" reads: "Moral, one dwelling-house, one tenant." Indeed, no practitioner would recommend any landlord of controlled premises to let to two or more persons jointly; but practitioners are often called upon to deal with cases of spilt milk. The footnote from which I have cited deals, in fact, with the position that may arise when a statutory tenant dies and a question arises which member of his family (those qualified not having achieved agreement on the point) is to acquire the—or a—tenancy. The learned author suggests that a court might "endow" a joint statutory tenancy with the *jus accrescendi* of an ordinary joint tenancy. In many cases which have occurred or are likely to occur, the joint statutory tenants being husband and wife, the question is unlikely to be other than an academic one, especially in view of the decision in *Moodie* v. *Hosegood* [1952] A.C. 61 which, unfortunately, had not been fought out before the current edition of the work appeared. But, apart from this there are, in my submission, other difficult problems which may arise from

the grant of a joint tenancy of controlled premises, and some of them may indeed arise before any such tenancy has been "converted into" a statutory tenancy.

For instance, while the language used in a well-known passage in the judgment in *Brown* v. *Draper* [1944] K.B. 309: "There are, we think, only two ways by which a tenant whose contractual tenancy has come to an end can lose the protections of the Act"—by giving up possession or by an order of court—does not in itself extend to loss of protection by a contractual tenant, the position of a contractual tenant would not require examination in the particular circumstances of such a case. What had happened was that a tenant had left the dwelling-house and left his wife, held to be his licensee, living in it and had then been given notice to quit. But let us suppose that no notice to quit had been given and that the tenant had purported to surrender his tenancy, would the result have been different? In *Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311 (C.A.) we had another case of unhappy differences leading to a giving up of possession by a husband tenant, his wife remaining; unfortunately, for present purposes, he was already a statutory tenant (having remained in possession on the expiration of a fixed term) when the event happened, and the main issue in the case was whether a determination of his wife's right to occupy as licensee was effective or not: it was not. But when one considers the reasoning of the decisions and the terms of s. 3 (1) of the Rent, etc., Restrictions (Amendment) Act, 1933: "No order or judgment for the recovery of possession of any dwelling-house to which the principal Acts apply or for the ejectment of a tenant therefrom shall be made or given unless . . .", the language clearly covering dwelling-houses let under contractual tenancies, one may be justified in considering that the circumstance that in the cases cited the tenancies had already become statutory ones was not essential to the judgment; though the circumstances were also, as they normally are, such that the contractual tenancy had been determined. What one may deduce from these authorities is, I submit, this: that a husband who during the currency of a controlled contractual tenancy purports to surrender it and then leaves the house occupied by his wife, *then* becomes a statutory tenant (against his own desire, as in *Brown* v. *Draper*); the wife of the tenant merely becomes licensee of a statutory tenant instead of licensee of a contractual tenant, and is no worse off.

I have tried to analyse the position in such cases because they are cases in which, by virtue of the Rent Acts, two persons enjoy a "status of irremovability" though their mutual relationship is that of licensor and licensee. But what is the position if they should be joint tenants? Now that many landlords are finding it possible to obtain possession of controlled premises by paying their tenants to surrender their interests (payment, being, as it were, C.O.D. of possession) a question worth considering is whether, in the event of there being a joint tenancy, each and every tenant must be a party to the bargain.

To deal with this question, it is necessary to recall some of the peculiar characteristics of a joint tenancy. It will be seen that while a general consideration of the nature of such an interest may at first suggest that one joint tenant might effectively surrender it to a landlord, at the risk, it may be, of incurring some liability to his co-tenant(s), further examination of the position makes the validity of such a transaction appear rather doubtful.

Blackstone has described the relationship between joint tenants as "thorough and intimate": *A* and *B*, holding two acres of land as joint tenants, do not each possess one acre, but each possesses two acres. Each has the same interest, possession, and title, from which it might seem plausible to contend that if they hold those two acres under a demise, either of them could go round to the landlord and negotiate a surrender of the term. At first sight, too, some support might be found for this view in a number of authorities upholding notices to quit given by one of several joint tenants, such as *Doe d. Aslin* v. *Summersett* (1830), 1 B. & Ad. 135, and *Easton* v. *Penny* (1892), 67 L.T. 290.

But, apart from the fact that those decisions conflict with others, that in the first-mentioned case the signatory may have been authorised by his co-tenants, and that in the other the decision was based on the fact that the wrong person (beneficiary entitled to reversion instead of trustee) had been served, there is an essential difference between determining a lease by notice to quit and determining one by surrender. For a periodic tenancy is essentially a glorified tenancy at will, as was indeed pointed out in *Doe d. Aslin* v. *Summersett*, and, subject to the requirement of notice, will not endure longer than everybody concerned wishes it to endure.

Further, there have been more recent illustrations of the strength of a third party's position—quite apart from rent control legislation—on the occasion of a surrender. The most striking decision was *Parker* v. *Jones* [1910] 2 K.B. 32: a landlord accepted a surrender of a field from his yearly tenant, who had covenanted not to sub-let without leave in writing and had never sought such leave; the landlord then let it to the defendant, who found the plaintiff, a tenant of the surrenderor, in possession as tenant from year to year. The defendant ejected the plaintiff's cattle and the plaintiff was held entitled to possession and damages. It is true that in the case of joint tenants there could be no talk of "derivative interests": nevertheless, the decision is an additional deterrent to any landlord contemplating negotiating a surrender with one joint tenant only.

R. B.

HERE AND THERE

ON THE WRONG LINES

PERHAPS some legal gentleman connected with British Railways or with the British Parliament may be interested in this story. Quite recently, the brief for the defence in a murder trial, packed in a parcel prominently labelled "urgent," was sent up from the provinces by rail to reach a main London terminus at 1.20 p.m. The clerk of the barrister to whom it was directed arrived at the station at 1.25, but at the parcels office no one seemed to know anything about it. He was invited to wait in case it turned up and wait he did for more than an hour and a half. Every now and then he attracted the spasmodic attention of the apathetic men in attendance to remind them that, after all, a life depended on the contents of the parcel; it wasn't just a bundle of old clothes. Once they let him look round the parcels hall himself. Another time he penetrated the private room of a higher official at the sacred moment of his cup of tea. He also tried the stationmaster's office. Some inquiries were made by telephone with negative results and nobody seemed able to suggest anything except that he should go on waiting. So far as the station staff in general were concerned, he might be waiting there still, but at 3.10 he happened to make contact with an inspector who fortunately produced an idea, as new as it was bright; they would search

the platforms together. Any of the parcels office staff, he said, could have arranged it way back at the start, but, he added, they were bone lazy and he could hardly get a stroke of work out of any of them. So the two of them started a search, and two platforms away from the one at which the train had arrived they found the brief at 3.25, near a pile of discarded parcel covers. If any legal gentleman, who is in a position to influence the working methods of the personnel of British Railways, would like further and better particulars, I can put him in touch with the clerk who made the search.

BLOOD SPORTS FOR DOGS

Do you like mutton? So, apparently, do dogs; and while, through Ministries and Civil Servants, we poor humans have been bargaining, not very effectively, with remote and sometimes hostile foreigners, to keep our meat ration above actual starvation level, our four-footed chums, true to the kindred principles of self-help and private enterprise, have been snapping up sheep and lambs right and left, a bag of 4,208 sheep and 17,161 poultry in 1949 rising to 5,844 sheep and 20,692 poultry in 1952. Until the war, sheep yet might safely graze on the immemorial pastures of the South Downs, and if now from the Devil's Dyke to Amberley Mount you glimpse only an occasional fleece one of the most powerful contributory causes is the uninhibited hunting of Rover and his friends, for the loss of mutton to the English larder is to be reckoned not in casualties only but in flocks permanently dispersed. Now it appears that the sheep-worrying is worrying Members of Parliament, too, and a Private Member's Bill designed to check the rising slaughter enjoyed the Government's blessing and some support among the Opposition. Though in the end it was "talked out" by a Socialist Member, the problem has certainly not been talked away. Among those who opposed the Bill was an Irish legal gentleman representing a Scottish urban constituency, who appeared to base his arguments on the charm of the dog as a companion and a suggestion that the reports of his misdeeds had been exaggerated after the manner of atrocity stories in war. Yet the problem is by no means a new one in his own native land. Lord O'Brien of Kilfenora, a great Irish Chief Justice of Edwardian days, was the central figure, if not the hero, of a relevant episode. In his earlier days he had exercised jurisdiction as a Master of Hounds, if "hounds" be the proper term for a collection of dogs who lived in cartsheds, piggeries, holes and corners of Kilfenora village, stealing such scraps as they could lay their teeth on and relying for their main meal on the leavings of the paupers' dinner at the workhouse. One day they vanished and were absent for a whole week. How they had employed themselves became apparent when a succession of farmers from the surrounding hills arrived in the village complaining that the brutes had been devouring unheard of quantities of sheep. Actions were brought against O'Brien as their ostensible proprietor, but this his counsel was able to disprove by the most cogent evidence that he neither housed nor fed them. The actions failed but the story against O'Brien lived.

"ACCURATE ENOUGH"

FROM a short story: The newspaper report "was accurate enough, as far as it went. That after being called to the Bar I joined the legal staff of Consolidated Utilities Company; a mention of my war service as a naval lawyer; and, with a rhetorical flourish, it said that three years ago I resigned my position with Utilities to open my own law offices in London with a partner."

RICHARD ROE.

REVIEWS

Simon's Income Tax. Second Edition. Volumes I–IV. Editor-in-Chief: The Right Hon. VISCOUNT SIMON, G.C.S.I., G.C.V.O., D.C.L., LL.D., Lord High Chancellor of Great Britain, 1940–45. 1952. London: Butterworth and Co. (Publishers), Ltd. Five volumes, £15 15s.; service, £2 12s. 6d. per year.

Three difficulties confront the practitioner in any branch of the law. First, to discover his law; second, to understand what he has discovered; third, to apply what he has understood to the facts before him. These three ought to be in ascending order of difficulty, but in fact, until recently, in dealing with Revenue matters the first was an almost insurmountable hurdle. The Income Tax Act, 1952, however, consolidated the hotchpot of gap-stopping expedients which made up the law, and the first difficulty is solved for a year or so. But the Income Tax Act, 1952, was a consolidating and not a reforming Act; it is beyond the wit of any human being completely to understand the tax laws of this country (although, some there are who think that they do) and it is given to few of us to understand them at all. It may be said at once that our best hope of acquiring understanding is by the use of this monumental work.

This new edition was made necessary by the 1952 Act, but the opportunity has been taken not only to bring up to date but to improve upon the already high standard of the first. In view of the vast size of the work it may assist those unfamiliar with it to explain, as it were, its topography. Volume I commences with a most interesting summary of the history of the subject and with an account of the machinery for its administration and collection. This is followed by a valuable 200 pages on procedure and with a discussion of the different classes of taxpayer. The remainder of vol. I and vol. II treat of the familiar five Schedules. Volume III deals with total income, with reliefs (including double taxation relief) and with sur-tax, profits tax and excess profits levy. Volume IV is a loose-leaf binder in which will be found annotated prints of all the relevant statutes and orders. The appendix has a good deal of information not readily obtainable elsewhere; there is a list of extra-statutory concessions and of wear and tear percentages. Volume V when published in a month or so will contain the table of cases and index, etc.

The text is divided into numbered paragraphs upon which the index is to be based. The Acts, etc., printed in vol. IV, not only have cross-references to other relevant sections but also, a great improvement on the first edition, are keyed to the paragraphs in the text in which the subject is discussed. What is more, there are references in each section of the 1952 Act to its ancestors and there is a table of comparative sections. Thus, one can see from vol. IV that (say) our old friend, the r. 21 claim, is now enacted in s. 170 of the 1952 Act and that it is explained in vol. I, para. 314 *et seq.*

Many in general practice will regard this as a book for the specialist and not for them. Undoubtedly it is a book that the Revenue expert will not be without, but it does not follow that it is not for the general practitioner. Indeed, the text does not appear to assume any initial specialised knowledge on the part of the reader. Most valuable in this connection are the numerous arithmetical examples for which Mr. J. S. Heaton, F.S.A.A., is responsible. Consider the ordinary reliefs which may be claimed by any taxpayer, no matter from what source his income arises. At vol. III, between pp. 157 and 172, one finds over two dozen arithmetical examples of personal relief, child relief, housekeeper relief, earned income relief, old age relief and small income relief. Again, in dealing with liability under Sched. A, which even the least Revenue-minded practitioner finds himself compelled to consider from time to time, there are to be found examples of repairs allowances, maintenance claims, "short-lease" liabilities and the like. To the non-specialist these illustrate

the application of the law in a manner which no length of explanation will excel.

To the expert, no commendation is necessary; he will have this book on his shelves and he will use it and, as is the way of experts, criticise it bitterly; but he will continue to use it because, short of writing his own, he will not find a better. To those who fight shy of income tax and think it best left to accountants, one can but say that this book will make their path through the jungle as open as it can be made.

The Licensing Acts. By the late JAMES PATERSON, M.A., Barrister-at-Law. Sixty-first Edition. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle upon Tyne. 1953. London: Butterworth & Co. (Publishers), Ltd., and Shaw and Sons, Ltd. 57s. 6d. net.

The principal change in "Paterson" since the last edition is that the old statutes relating to excise duties, beginning in 1825, have been repealed and replaced, in crisper language, by the Customs and Excise Act, 1952. The relevant parts of the new Act are set out with the appropriate notes, and, like its predecessors, the book contains a comprehensive, up-to-date and lucid statement of the law relating to intoxicating liquor and the other licensing subjects covered. The sixty-first edition is fully up to the high standard expected of "Paterson" and, in view of the new arrangement of the law caused by the Customs and Excise Act, it will be a valuable addition to the library of every lawyer who deals with its subject-matter. To those particularly concerned with liquor licensing, it will be indispensable.

The preface reviews the decisions of the past year and the few changes made by the new Act, but the editor does not mention the case of *R.* v. *Gloucestershire Justices, ex parte Drew* (1952), 50 L.G.R. 220. That decision, however, seems to have laid down no point of principle and the omission is a very minor matter.

We note that a Bill to consolidate the enactments relating to licensing for intoxicating liquor will probably be introduced during the present Session of Parliament.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

HOUSE OF LORDS

REVENUE: PROFITS TAX: COMPANIES RESIDENT IN UNITED KINGDOM AND ABROAD: WHETHER "ORDINARILY RESIDENT OUTSIDE THE UNITED KINGDOM"

Union Corporation, Ltd. *v.* Inland Revenue Commissioners

Johannesburg Consolidated Investment Co., Ltd. *v.* Same

Trinidad Leaseholds, Ltd. *v.* Same

Lord Normand, Lord Oaksey, Lord Morton of Henryton, Lord Reid and Lord Cohen. 9th March, 1953

These three appeals were brought respectively by Union Corporation, Ltd., Johannesburg Consolidated Investment Co., Ltd., and Trinidad Leaseholds, Ltd., from three orders of the Court of Appeal affirming three orders of Harman, J., whereby he dismissed the respective appeals of the three appellant companies from decisions of the Special Commissioners concerning the computation of their respective liabilities to profits tax. Each of the three appeals raised the same two questions: (i) whether on the assumption that a company was shown to have been ordinarily resident in a place outside the United Kingdom throughout a given chargeable accounting period it was upon the true construction of s. 39 (1) of the Finance Act, 1947, entitled to the benefit of that provision in the computation of its liability to profits tax, as having been "ordinarily resident outside the United Kingdom throughout" the relevant chargeable accounting period within the meaning of s. 39 (1), notwithstanding that it was admittedly also ordinarily resident in the United Kingdom throughout the same period; and (ii) if the answer to the first question was in the affirmative whether, having regard to the circumstances in which, according to the authorities, dual residence could as a matter of law properly be inferred, the company was on the facts of the case shown to have been throughout the relevant period ordinarily resident in the place outside the United Kingdom claimed as its second or concurrent place of residence. Section 39 of the Finance Act, 1947, provided: "(1) Where the person carrying on a trade or business is ordinarily resident outside the United Kingdom throughout a chargeable accounting period, the profits tax payable by that person shall be ascertained as if no net relevant distributions to proprietors had been made in the case of that person for that period. (2) Where a trade or business is carried on by a body corporate and, throughout a chargeable accounting period, both the following conditions are fulfilled, that is to say (*a*) that that body corporate is ordinarily resident in the United Kingdom; and (*b*) that another body corporate which is not ordinarily resident in the United Kingdom controls, directly or indirectly, not less than one-half of the voting power in the first-mentioned body corporate, distributions to that other body corporate shall be left out of account in determining, in relation to the first-mentioned body corporate, the net relevant distributions to proprietors for that period."

LORD COHEN said, bearing all the considerations advanced by the parties in mind, he had come to the conclusion that the Court of Appeal were right when they had said that the words of s. 39 (1), construed in their natural meaning and against the background of the taxing Acts generally, could only be construed in the sense contended for by the respondents, so that the appellants, being resident inside, could not claim the benefit conferred by the section on persons resident outside the United Kingdom. In arriving at this conclusion he had not overlooked the contention that on this basis logically the "body corporate ordinarily resident in the United Kingdom" referred to in subs. (2) (*a*) should not include a body corporate ordinarily resident outside the United Kingdom, whereas the respondents accepted that it did include such a body corporate. Since the construction of subs. (2) was not now directly in point and might arise before them in another case, he preferred to say no more than that he did not think this contention could affect their lordships' decision in view of the other matters to which he had referred. Both Harman, J., and the Court of Appeal dealt at length with the question whether each of the three appellant companies was in fact resident outside as well as inside the United Kingdom, no doubt in order that their lordships might have the assistance of their opinion on that question in case their lordships differed from them on the first question. In view of the fact that their lordships were affirming the decision of the Court of Appeal on the first question, he did not find it necessary to consider the second question, and the appeal would be dismissed.

LORD NORMAND, LORD OAKSEY, LORD MORTON and LORD REID concurred.

APPEARANCES: *Tucker*, Q.C., *Mustoe*, Q.C., and *R. R. D. Phillips* (*Herbert Smith & Co.*); *Grant*, Q.C., *F. N. Bucher* and *Philip Shelbourne* (*Holmes, Son & Pott*); *Sir Lionel Heald*, Q.C., A.-G., *Talbot*, Q.C., and *Sir Reginald Hills* (*Solicitor of Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 615**

NATIONALISATION: ONE-MAN ROAD TRANSPORT UNDERTAKING: BASIS OF COMPENSATION

Road Transport Executive *v.* Elrick

Lord Normand, Lord Oaksey, Lord Reid, Lord Asquith of Bishopstone and Lord Cohen. 9th March, 1953

Appeal from the Court of Session ([1952] S.C. 192).

By s. 47 (3) of the Transport Act, 1947, if a notice of acquisition causes a total or partial cessation of the business of the proprietor of a transport undertaking, the British Transport Commission are to pay him such sum as may be just calculated by reference to the average net annual profit as defined by Sched. IX to the Act, which provides: "(1) the average net annual profit of the undertaking" shall be ascertained in accordance with the

subsequent provisions of the schedule; and by para. (2) that "there shall be ascertained . . . what profit or loss was made in the carrying on of the undertaking." The respondent was the sole proprietor of a road haulage business, which was compulsorily acquired under the Act. He had each year in his accounts received a payment of £700 in respect of services rendered to his business. In computing the average net annual profit of the undertaking, the appellants did not add back the sum of £700 in respect of the sum so drawn by the respondent. The question was referred to the Transport Arbitration Tribunal, who decided in favour of the respondent and held that that sum should be added back in computing the average net annual profit, and their decision was upheld by the Court of Sessions. The executive appealed.

LORD REID said that the question depended on the meaning of the phrase "average net annual profit"; that was said to be defined by Sched. IX but the schedule contained no definition. The natural assumption was, therefore, that "profit" must be taken to have its ordinary meaning. Everything that an owner gained in running his business was profit; the £700 was a mere bookkeeping entry without legal or practical significance; it was merely the way in which the respondent chose to apportion the profit. The appellants had also contended that "profit" meant the profit-earning capacity of the business and not the profit actually earned by the owner; that the profit-earning capacity must be the same whether the owner did the work or paid someone else to do it; in the latter case the wages paid would be a deduction, so that if the owner did the work himself a similar deduction must be made. The answer to that was that there was nothing in the Act to support a distinction between profit-earning capacity and profit; Sched. IX dealt with profit actually earned.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *E. Milner Holland*, Q.C., *P. Browne* (both of the English Bar) and *Emslie* (of the Scottish Bar) (*Clifford-Turner & Co.*, for *J. & A. Hastie*, Edinburgh); *Leslie*, Q.C., and *A. Thomson* (both of the Scottish Bar) (*Forsyte, Kerman and Phillips*, for *James Farquharson*, Edinburgh, and *Henry J. Gray and Connachie*, Aberdeen).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 602

REVENUE: INCOME TAX: WHETHER POLICE ATHLETIC ASSOCIATION A CHARITY: JURISDICTION OF COURT OF SESSION

Inland Revenue Commissioners *v.* City of Glasgow Police Athletic Association

Lord Normand, Lord Oaksey, Lord Morton of Henryton, Lord Reid and Lord Cohen. 9th March, 1953

Appeal from the Court of Session ([1952] S.C. 102).

By s. 30 (1) (*c*) of the Finance Act, 1921, as amended by s. 24 of the Finance Act, 1927, exemption is granted "from income tax under Sched. D in respect of the profits of a trade carried on by any charity, if the profits are applied solely for the purposes of the charity and either (i) the trade is exercised in the course of the actual carrying out of the primary purpose of the charity; or (ii) the work in connection with the trade is mainly carried on by the beneficiaries of the charity." By subs. (3): "In this section the expression 'charity' means any body of persons or trust established for charitable purposes only." The respondent association was a merger formed in 1938 of local police clubs. Its object was "to encourage and promote all forms of athletic sports and general pastimes." Ordinary membership was restricted to officers and ex-officers of the Glasgow police, the subscription being threepence per week. Annual sports were held, for which admission was charged, the net proceeds being paid into the general fund, £1,214 being raised from this source in 1950–51 which the Revenue assessed for income tax. The Special Commissioners found that the association was regarded as an essential part of the Glasgow force; that it played a valuable part in maintaining health, morale and *esprit de corps*, and that generally its activities were conducive to a contented, fit and efficient police force, and a help towards recruiting and the promotion of good relations with the public, who were thereby indirectly benefited. The Commissioners discharged the assessment. On the matter coming by stated case before the Court of Session, the Lord President said that, since *Pemsel's* case [1891] A.C. 531, what constituted a "charity" for income tax purposes was a matter of English law; that since then the general law of charity had progressed in England and Scotland with growing divergence; that the Court of Session could not invest itself with the unique attributes of the Chancery Division; so that the English law of charity was foreign law, and a question of fact, so that the finding of the Commissioners was a finding of fact, which the court would not disturb. The Revenue appealed.

LORD NORMAND said that he had sympathy with Scottish judges who had to administer the English law of charity; but by reason of *Pemsel's* case (*supra*) and s. 19 of the Finance Act, 1925, they had a statutory duty to decide any question of law which came before them touching exemptions, and for income tax purposes the English law of charity had become part of the law of Scotland and was not foreign law. In administering that law the court was not technically bound by English decisions, which it might discuss or criticise, but to which it was only good sense to pay special regard. On the merits of the appeal, the association claimed to be within the last category of classifications in *Pemsel's* case, *supra*. The stated objects were not charitable purposes. The members' subscriptions were spent exclusively on their own sports and recreations. To augment that fund, they carried on the trade of holding the annual sports. It was shown by the *Hobourn Aero* case [1946] Ch. 87 that a body which merely applied the subscriptions of its members to their own recreation was not charitable. The association was regarded as of public importance, as the Commissioners were entitled to find; but there remained the non-charitable purpose of providing recreation to the members. The question was whether that object was incidental to the public charitable purpose; to establish that it must be shown that the association was established for a public purpose, and that the private benefit to the members was an unsought consequence of the pursuit of the public purpose. The private benefit of the members was essential, and the association was not established for a public charitable purpose only; it was therefore liable to income tax, and the appeal must be allowed.

LORD MORTON OF HENRYTON, LORD REID and LORD COHEN agreed; LORD OAKSEY dissented. Appeal allowed.

APPEARANCES: *Clyde*, Q.C. (Lord Advocate), *J. H. Stamp* and *Sir Reginald Hills* (both of the English Bar) and *Grieve* (of the Scottish Bar) (*Solicitor of Inland Revenue*); *Hunter*, Q.C. (of the Scottish Bar), *Wilfrid Hunt* (of the English Bar) and *W. Fraser* (of the Scottish Bar) (*Wedlake, Letts & Birds*, for *A. & W. M. Urquhart*, Edinburgh, and *Walker & Orr*, Glasgow).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 625

SCOTTISH LAW: NEGLIGENCE: WHETHER WIDOW PURSUER'S PRIVATE MEANS RELEVANT

Shiels *v.* Cruikshank

Lord Normand, Lord Oaksey, Lord Reid, Lord Asquith of Bishopstone and Lord Cohen. 9th March, 1953

Appeal from the Court of Session.

The pursuer's husband was killed in an accident occasioned by the defender's motor cycle. In an action for damages she averred that the defender was at fault, that she was dependent on the deceased for support, and that at the time of the accident "the income of the deceased amounted to £22,000 per annum, of which at least £17,000 was represented by salaries and fees, which ceased with his death." In his answers, the defender, after a general denial, averred that the pursuer had been left with ample means from the estate of the deceased, and that she had also "a substantial private fortune available for her support." In reply, the pursuer, after certain admissions, added a plea in law that "the defender's averments relating to the private means of the pursuer being irrelevant, should not be admitted to probation." The Lord Ordinary sustained the pursuer's plea to the relevancy. On the defender lodging a reclaiming note, the Second Division, by a majority, sustained the Lord Ordinary's interlocutor. The defender appealed.

LORD NORMAND said that the defender contended that he would be precluded from showing that the pursuer had not been wholly maintained by the deceased during his life. On a claim of this nature, the defender was always entitled to ask the pursuer whether the cost of her support had been met partly by the husband, and partly from some other source, and the majority of the Second Division had not thought that the result of their judgment would be to exclude inquiry of that sort. The effect of the interlocutor was to exclude from probation the single averment "the pursuer has a substantial private fortune available for her support." It resulted that the pursuer averred her dependency, and the defender denied it. The pursuer was under the onus of proving her dependency and its extent, and the defender was entitled to cross-examine and lead evidence to show

that the husband's contribution was less than the pursuer represented. Accordingly, the defender's apprehensions that the inquiry would be unduly restricted were groundless, and the appeal should be dismissed.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *Morison*, Q.C. (of the English Bar, Q.C. of the Scottish Bar), and *M'Larty* (of the Scottish Bar) (*Dennes & Co.*, for *Simpson & Marwick*, W.S., Edinburgh); *Cameron*, Q.C. (Dean of the Faculty) and *Grieve* (of the Scottish Bar) (*Stilgoes*, for *Macpherson and Son*, Edinburgh).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 533

COURT OF APPEAL

COMPANY: FRAUD: CONCEALMENT BY MANAGING DIRECTOR: SALE OF SHARES: CLAIM FOR DAMAGES BY PURCHASER: LIABILITY OF INNOCENT SHAREHOLDERS

Briess and Others *v.* Rosher and Others

Lord Goddard, C.J., Morris and Romer, L.JJ.
17th February, 1953

Appeal from Barry, J.

Company *X* was permitted to manufacture and sell synthetic cream, if made in accordance with a formula approved by the Ministry of Food. By 1947 company *X* could not obtain enough raw material at a price which would enable the business to continue to be carried on at a profit. *R*, the managing director, then added water to the product, so that he did not make the synthetic cream according to the formula, but increased the bulk which was being sold. This fraud was not known to any other director nor to any shareholder of company *X*. In 1948 *R*, without authorisation, approached the directors of company *Y* with a view to their company buying the shares of company *X*. The other directors of company *X* were quite unaware of those negotiations and *R* continued to conceal his fraud. After three months' negotiations *R* put forward to the board of company *X* a tentative proposal by company *Y* to buy the shares of company *X* at certain prices. It was decided at the board meeting in October, 1948, that the proposition should be placed before the shareholders. At a general meeting, the same day, according to the minute: "This matter was discussed very fully and it was agreed that '*R*,' who had already been in negotiation with 'company *Y*,' should take the matter up further with that company with a view to completing the transaction on the above basis." Later a firm offer was made and accepted for the shares at the prices originally proposed, but, between the date of the general meeting of company *X* and the sale of the shares, there had been another meeting between *R* and one of the directors of company *Y*, a visit by those directors to the factory of company *X* and a request by the directors of company *Y* to see the balance sheet of company *X*, which was produced to them. The directors of company *Y*, having discovered that the cream manufactured by company *X* was not in accordance with the Ministry of Food specification and accordingly could not lawfully be sold, sued *R* and two of the shareholders of company *X* for damages. Barry, J., gave judgment against them; he held that the innocent shareholders who had no knowledge of *R*'s fraudulent concealment were liable vicariously for his fraud. The shareholders, but not *R*, appealed.

LORD GODDARD, allowing the appeal, said that it was argued that the shareholders, who were innocent of any fraud in the matter and had no knowledge of any misrepresentations which had been made and were in the dark about the defects of this substance which the company was manufacturing, were liable in damages to the purchasers, and the trial judge had so held. He had held that they were liable on the doctrine of vicarious liability, that was to say, that because their agent was fraudulent the shareholders were fraudulent. He need not go into the question of what would have happened if after the meeting of October fraudulent misrepresentations had been made by *R*. It might be that the shareholders, if *R* had been told to negotiate on their behalf, would have been liable. But, in truth, the matter came to no more than this: *R*, who for his own purposes and to serve his own ends had no doubt made fraudulent misrepresentations to the plaintiffs, simply told the shareholders that he could procure a certain sum each for the preference shares and the ordinary shares. No matter how exactly the minute was worded, these shareholders had said: "We will take it, you get us that money." He could not see, therefore, that the shareholders could be made to disgorge this money, because they were no party to the fraudulent misrepresentations. He based his judgment on the ground that the minute of the general meeting in October did not give *R* any authority or purport to give him any authority to negotiate on behalf of the company. They did not give him any authority to act as their agent to negotiate this purchase. They were led by *R* to believe that the thing was a *fait accompli* to the extent that he had it in his bag and that if they said that they would accept it they would get their money.

MORRIS, L.J., concurred.

ROMER, L.J., said that when negotiations for the sale of shares of a company, which were often protracted, were undertaken by the directors, then according to the plaintiffs' case, if the shareholders authorised the board to carry the proposal to fruition, if it subsequently turned out that one of the board in the course of the negotiations had made a fraudulent misrepresentation for some purpose of his own, then every shareholder would be liable in damages as a result at the suit of the purchaser. There was no authority for such a proposition and such a result would be disastrous.

APPEARANCES: *Salmon*, Q.C., and *C. H. Gage* (*Woolley, Tyler & Bury*); *Gardiner*, Q.C., and *Neil Lawson* (*Buckeridge and Braune*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.R.L. 608

CONTRACT: NON-EXISTENT COMPANY: RIGHT OF PURPORTED DIRECTOR TO SUE AS PRINCIPAL

Newborne *v.* Sensolid (Great Britain), Ltd.

Lord Goddard, C.J., Morris and Romer, L.JJ.
19th February, 1953

Appeal from Parker, J. ([1952] 2 T.L.R. 763; 96 SOL. J. 765).

The plaintiff *L.N.*, who was in process of forming a company of produce merchants to be known as L.N. (London), Ltd., after negotiations sent to the defendants a contract note of sale signed "L.N. (London), Ltd.," with "L.N." underneath. On the back of the contract note, *L.N.* and *M.N.* were stated to be directors. The defendants accepted and signed the contract note. At the time all parties thought that the company, which was not incorporated till later, was a contracting party. On the defendants refusing to take delivery, a writ was issued in the company's name. It was later discovered that the company was non-existent at the date of the contract, and *L.N.* was substituted as plaintiff. The defendants contended that the contract was a nullity, and Parker, J., gave judgment in their favour. *L.N.* appealed.

LORD GODDARD, C.J., said that it was contended for the plaintiff that the question was governed by the well-known line of cases on *Kelner* v. *Baxter* (1866), L.R. 2 C.P. 174; but that case was far short of laying down that whenever a non-existent company purported to contract, a person signing for the company made himself personally liable. In the present case *L.N.* had never purported to contract as agent or principal. When signing as a purported director, he was not an agent in the ordinary sense. The company purported to make the contract, and *L.N.* purported to authenticate it by signing as a director. The goods were those of the company, not of *L.N.*; it was the company's contract, and *L.N.*'s signature was merely a confirmation. As the company was non-existent, there was no contract, and the appeal must be dismissed.

MORRIS and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *W. J. K. Diplock*, Q.C., and *M. Littman* (*Godfrey Davis & Foster*); *L. Pearl* (*Ashurst, Morris Crisp & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 596

CHANCERY DIVISION

PARTNERSHIP: DISSOLUTION: ACCOUNTS: NO AGREEMENT AS TO PARTNERSHIP ASSETS

Miles *v.* Clarke

Harman, J. 23rd February, 1953

Action.

The plaintiff and the defendant, as partners at will, conducted a business as commercial and fashion photographers. The plaintiff was a well-known photographer and brought in a considerable goodwill. The leasehold premises, furniture and studio equipment belonged to the defendant. The latter also claimed to have contributed to the goodwill of the business. Both parties brought in a quantity of negatives. It was intended that a

partnership agreement should be drawn up to include the above items, but no terms were ever settled except that the parties should share the profits equally, and that the plaintiff should have certain monthly drawings on account of his share of the profits. Subsequently the parties quarrelled and the partnership came to an end. At the trial it was conceded that a partnership at will had existed from 1950 until 1952, and the court ordered an inquiry as to what were the partnership assets.

HARMAN, J., said that the plaintiff and defendant for years had carried on business and failed to agree about terms at all, except that they should have equal profits. In his judgment no more agreement between the parties should be inferred than was absolutely necessary to give business efficacy to that which had happened; that was the only safe way to proceed. It was absolutely necessary to assume that things *quae ipso usu consumuntur*, the stock-in-trade, in fact had to be treated as having been brought into the partnership, and that they must be treated as having a value to be ascertained by inquiry. They were all brought in by the defendant. He saw no necessity of assuming that anything else went into the partnership. As the parties had failed to agree it was not necessary to say that the defendant must be assumed to have thrown the lease and the plant into the pot. In his judgment, therefore, nothing changed hands except those things which were actually used and used up in the course of the carrying on of the business. He would answer the inquiries by declaring that the lease, furniture and fittings and the equipment of the studio did not form part of the partnership property but remained the separate property of the defendant; that the plaintiff's and defendant's photographic negatives and prints brought into the business on 1st April, 1950, remained the property of the person bringing them in; further, that neither the defendant's nor the plaintiff's goodwill or reputation should be treated as assets of the partnership. He would make a general declaration that the stock-in-trade and consumable chattels ought to be treated as partnership property brought in by the defendant. No charge would be made against the partnership for depreciation to the leasehold premises. The partnership would be credited with any sum spent on improvements to the premises (see *Pawsey* v. *Armstrong* (1881), 18 Ch. D. 698), but it would be debited with proper outgoings, such as rent, rates and insurance during the partnership occupation of the premises.

APPEARANCES: *Christie*, Q.C., and *L. J. Belcourt* (*Blacket Gill & Topham*); *Jennings*, Q.C., and *Nigel Warren* (*Stafford Clark & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 537

COPYRIGHT: REGISTERED DESIGN: MEANING OF "MEDAL"

Reliance (Nameplates), Ltd. *v.* Art Jewels, Ltd.

Vaisey, J. 3rd March, 1953

Interlocutory motion.

The Copyright Act, 1911, by s. 22 (1), excludes from the ambit of copyright designs capable of registration under the Patents and Designs Act, 1907. The Registered Designs Act, 1949, provides, by s. 1 (4): "Rules made by the Board of Trade under this Act may provide for excluding from registration thereunder designs for such articles, being articles which are primarily literary or artistic in character, as the Board think fit." By r. 26 of the Designs Rules, 1949, made thereunder: "There shall be excluded from registration under the Act designs to be applied to any of the following articles, namely . . . (2) wall plaques and medals." The plaintiffs, in an action, moved for an interlocutory injunction to restrain the defendants from infringing their copyright in a coronation souvenir medallion. According to the plaintiffs' evidence, they had designed and were making and selling souvenir circular medallions bearing on the face a portrait of Her Majesty, and on the back an inscription, a design of oak leaves, and the cypher "E.R."; the defendants had made a cast or die from the plaintiffs' medallion, and were selling inferior reproductions. The defendants filed no evidence, but contended that the plaintiffs' medallion was registrable as a design, and so was not proper subject-matter of copyright under the Act of 1911.

VAISEY, J., said that *Usher* v. *Barlow* [1952] 1 T.L.R. 239 showed that s. 22 (1) of the Act of 1911 must now be read as referring to the Designs Act, 1949. It followed that the plaintiffs' right to copyright depended on whether their medallion was a "medal" within r. 26. In the Oxford English Dictionary a medal was defined as "a piece of metal, usually in the form of a coin, struck or cast with an inscription, a head or effigy of a person, or other device or figure to commemorate a person, action or event." The plaintiffs' medallion bore all those characteristics, and could not be excluded from the definition above, and from the conception of a medal in the minds of ordinary people. It was therefore proper subject-matter of copyright. Having regard to the balance of convenience, it would be proper to grant the interlocutory injunction prayed. Injunction granted.

APPEARANCES: *J. Mould*, Q.C., and *F. E. Skone James* (*Allen & Overy*); *K. E. Shelley*, Q.C., and *M. Share* (*Beach and Beach*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 530

QUEEN'S BENCH DIVISION

NATIONALISATION: GAS: LIMITATION: FACTORY: OFFENSIVE FUMES

Coote *v.* Eastern Gas Board

Byrne, J. 27th February, 1953

Action.

Between 1937 and 1948 the plaintiff was employed by a gas company as a stoker in the retort house, which was admittedly a factory within the Factories Act, 1937. During the war, owing to the black-out, the ventilators in the roof were partially covered, thereby causing some inconvenience to men working at night, by the accumulation of gas and dust, but no complaints had been made. In 1948 the plaintiff developed bronchitis and emphysema; he left the retort house and became a slot meter collector at a lower wage. On 1st May, 1949, the gasworks vested in the defendants under the Gas Act, 1948, which provides, by s. 17 (5) ". . . where any right, liability or obligation vests by virtue of this Act, the appropriate Board and all other persons shall . . . have the same rights, powers and remedies (and in particular the same rights as to the taking or resisting of legal proceedings . . .) for . . . enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Board . . ." In October, 1949, the plaintiff issued a writ against the defendants, claiming damages for injury and loss said to have been sustained by him by reason of breaches by the company of s. 4 (1) of the Factories Act, 1937, which requires the provision of adequate ventilation against "fumes, dust and other impurities that may be injurious to health," and of s. 47 (1), which requires that all practicable measures shall be taken to protect persons employed where "there is given off any dust or fume or other impurity . . . such . . . as to be likely to be injurious or offensive to the persons employed . . ." The defendants denied breach of statutory duty, and contended that the action was barred by s. 14 (2) of the Gas Act, 1948, as it was commenced more than three years after the cause of action arose in 1945.

BYRNE, J., said that the meaning of s. 17 (5) was that the Board took over the rights and liabilities such as they were at the vesting date; then, the plaintiff's claim against the company was subject to the six years' limitation provided by s. 2 of the Limitation Act, 1939. After vesting date, anything done by the Board was protected after three years by s. 14. Any other construction would cause injustice by the destruction of existing causes of action. On the issue of breach of statutory duty, it was shown by *Ebbs* v. *James Whitson & Co., Ltd.* [1952] 1 T.L.R. 1428; 96 SOL. J. 375, that the risk of injury must be one which the occupier knew or ought to have known, if he was to provide practicable protective measures. "Offensive" in s. 47 meant that the fume must be of such a character and extent as to be offensive to the persons employed. Gas works had a nasty smell, and if a man worked in a gas works, or in other malodorous processes, he knew perfectly well that there would be a smell, which might be offensive to ordinary people, but which he could not avoid, so that it could not be said to be "offensive" to persons so employed. The action, accordingly, failed. Judgment for the defendants.

APPEARANCES: *S. Chapman* (*L. Bingham & Co.*); *G. G. Baker*, Q.C., and *Sir S. Worthington-Evans* (*Barlow, Lyde & Gilbert*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 592

Major A. T. Houghton, solicitor, of Preston and Blackpool, left £10,989.

Mr. J. M. Wilkinson, solicitor, of Tunbridge Wells, left £43,014 (£42,764 net).

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read Third Time :—

City of London (Central Criminal Court) Bill [H.L.] [10th March.
Hospital Endowments Scotland Bill [H.L.] [12th March.
Merchandise Marks Bill [H.L.] [12th March.
Rhoanglo Group Bill [H.C.] [12th March.
Royal Titles Bill [H.C.] [11th March.
University of St. Andrews Bill [H.L.] [12th March.
University of Southampton Bill [H.C.] [12th March.

In Committee :—

Transport Bill [H.C.] [12th March.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Judges' Remuneration Bill [H.C.] [13th March.
To increase the remuneration attached to certain high judicial offices.

Read Second Time :—

Births and Deaths Registration Bill [H.L.] [11th March.
British Transport Commission Bill [H.C.] [11th March.
Local Government (Miscellaneous Provisions) Bill [H.C.] [13th March.

B. Questions

Report of the Copyright Committee

Asked whether he had accepted the recommendation of the Copyright Committee that a standing tribunal should be established to decide disputes between collecting organisations controlling performing rights and would-be users of the works controlled, Mr. Peter Thorneycroft said that he had no statement to make yet. No organisations had yet been consulted. He would bear in mind a suggestion that the claims of competing organisations in the field of musical copyright especially had been the source of embarrassment and confusion, and that a standing tribunal would be very useful. [10th March.

Cinematograph Films Act (Registrations)

Mr. Peter Thorneycroft said he was contemplating no changes in the Cinematograph Films Act, 1938, in the light of Mr. Justice Vaisey's judgment in the *Monsoon* case [*ante*, p. 171]. That judgment would certainly not exclude from the British quota certificate any genuinely British-made films. He thought the judgment in the *Monsoon* case was based on the facts of that particular case—and the facts were rather special. [10th March.

Town and Country Planning Act (Claims)

Mr. J. Johnson asked whether the Minister was aware of the many cases of hardship that had occurred where small property owners had to pay development charges because they had omitted to make their claims under s. 80 of the Town and Country Planning Act, 1947, before 30th June, 1949. Mr. Marples said the Minister of Housing and Local Government was not aware of many such cases. The time for making these claims had to terminate some time and people had already had three and a half years from the year allowed by the statute. Nevertheless, he was anxious to avoid hardship whenever and wherever he could, and he was therefore prepared to continue entertaining claims under s. 80 for a further period. [10th March.

Coronation Amnesty (Deserters)

Sir Herbert Williams asked under what authority it was proposed to stay proceedings in respect of which there was *prima facie* evidence of an offence under the Army and Air Force Annual Act, having regard to the explicit terms of the Bill of Rights that such a course was illegal without the consent of Parliament.

The Attorney-General said that the Army and Air Councils had absolute discretion under the Annual Act in respect of the institution and conduct of proceedings for military offences. The exercise of that discretion would not, in his opinion, in any circumstances involve a contravention of the Bill of Rights. [11th March.

Birth Certificates

Mr. Iain Macleod stated that no special form of birth certificate was issued to foundlings or other persons, the date of whose birth could not be precisely determined. The certificate had to agree with the particulars recorded, and if the birth was recorded as having occurred on or about a certain date, that information appeared in the certificate. [12th March.

Estate Management Directions (Fines)

Sir Thomas Dugdale stated that during the last five years only one fine, in 1951, had been imposed under s. 14 (4) of the Agriculture Act, 1947. [12th March.

Juvenile Crime

The Home Secretary stated that provisional figures for 1952 showed that at all courts in England and Wales 26,212 children under the age of 14, and 18,866 young persons aged 14 and under 17, were found guilty of indictable offences. The comparable figures for 1951 were 28,578 and 18,895. [12th March.

STATUTORY INSTRUMENTS

Agriculture (Poisonous Substances) Regulations, 1953. (S.I. 1953 No. 358.) 8d.

Distribution of Industry (Development Areas) Order, 1953. (S.I. 1953 No. 330.)

Educational Conferences Amendment Regulations, No. 2, 1953. (S.I. 1953 No. 317.)

Explosives Act, 1875 (Ryde) Order, 1953. (S.I. 1953 No. 326.)

Ham House Grounds Regulations, 1953. (S.I. 1953 No. 354.) 5d.

Hat, Cap and Millinery Wages Council (Scotland) Wages Regulation Order, 1953. (S.I. 1953 No. 361.) 8d.

Import Duties (Drawback) (No. 4) Order, 1953. (S.I. 1953 No. 315.)

Imported Plywood Prices (Revocation) Order, 1953. (S.I. 1953 No. 318.)

Ipswich (Baytham) Water Order, 1953. (S.I. 1953 No. 351.)

Kirkcaldy Corporation Water Order, 1953. (S.I. 1953 No. 334 (S.31).)

London Traffic (Prescribed Routes) (No. 10) Regulations, 1953. (S.I. 1953 No. 356.)

London Traffic (Prohibition of Waiting) (High Street and London Road, Sevenoaks) (Amendment) Regulations, 1953. (S.I. 1953 No. 357.)

Management of Patients' Estates (Percentage and Fees) Rules, 1953. (S.I. 1953 No. 336 (L.4).)

These rules increase the fees and percentages which are payable in respect of the administration of patients' estates.

Merchandise Marks (Imported Goods) (No. 10) Order (Provisional Exemption) Direction, 1953. (S.I. 1953 No. 367.)

National Assistance (Determination of Need) (Savings Bank) Regulations, 1953. (S.I. 1953 No. 352.)

Nene River Board (Alteration of Boundaries of the Wingland Internal Drainage District) Order, 1953. (S.I. 1953 No. 374.)

Osterley Park Grounds Regulations, 1953. (S.I. 1953 No. 355.) 5d.

Retention of Cable and Mains under Highway (Zetland) (No. 1) Order, 1953. (S.I. 1953 No. 338.)

Retention of Pipe under Highway (Anglesey) (No. 1) Order, 1953. (S.I. 1953 No. 327.)

Rubber Reclamation Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1953. (S.I. 1953 No. 349.) 6d.

Sack and Bag Wages Council (Great Britain) Wages Regulation Order, 1953. (S.I. 1953 No. 316.) 6d.

Savings Bank (Fees) (Amendment) Warrant, 1953. (S.I. 1953 No. 365.)

Stopping up of Highways (Cheshire) (No. 1) Order, 1953. (S.I. 1953 No. 340.)

Stopping up of Highways (Derbyshire) (No. 1) Order, 1953. (S.I. 1953 No. 328.)

Stopping up of Highways (Dorset) (No. 1) Order, 1953. (S.I. 1953 No. 341.)

Stopping up of Highways (Lincolnshire—Parts of Kesteven) (No. 1) Order, 1953. (S.I. 1953 No. 339.)

Stopping up of Highways (North Riding of Yorkshire) (No. 1) Order, 1953. (S.I. 1953 No. 342.) 5d.

Superannuation (the Civil Service and the Federated Superannuation System for Universities) Transfer Rules, 1953. (S.I. 1953 No. 337.) 5d.

Tavistock Water Order, 1953. (S.I. 1953 No. 331.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102–103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.

Lease for Seven Years or Life of Lessee—Proposed Underlease for One Year Certain

Q. The habendum of a lease to *A* is as follows: "To hold . . . for the term of seven years or for the period of the life of the lessee whichever shall be shorter . . ." Is this lease to be construed as one for life and therefore, in view of s. 149 of the Law of Property Act, 1925, deemed to be one for ninety years determinable by one month's notice after death, etc.? Or does the fact that the habendum specifically states "seven years or for the period of the life of the lessee *whichever shall be shorter*" mean that s. 149 is excluded in view of the fact that the lease as drawn may be determinable before the death of the lessee?

What would be the position in the event of sub-letting the same premises for a year certain to *B*? If in fact the original lease is to be construed as one for life, or even if it is not, and *A* dies, *B* might well have a claim against *A's* estate if the original lease is determined before the end of the twelve months. Therefore, in order that *A's* estate may be safeguarded, do you consider it advisable to have a proviso that in the event only of the death of *A*, his personal representatives may give to *B* three weeks' notice to quit the premises? Presumably, if the habendum of a new agreement was for "twelve months or for the life of *A* whichever is the shorter," the same difficulty would be met if in fact the leases are to be construed in accordance with s. 149.

A. In our opinion the Law of Property Act, 1925, s. 149 (6), does apply; if the word were "longer" instead of "shorter" it might be that the operation of the subsection would be excluded; but as it reads the habendum creates a term "determinable with life." It does not, however, follow that in the event of *A's* death during the currency of the proposed underlease *B* would have any claim against *A's* estate, *A* not having expressly bound himself to compensate *B*, who has constructive notice of *A's* title (Law of Property Act, 1925, s. 44; *Clayton* v. *Leech* (1889), 41 Ch. D. 103 (C.A.); *Besley* v. *Besley* (1879), 9 Ch. D. 103; *Baynes & Co.* v. *Lloyd & Sons* [1895] 2 Q.B. 610 (C.A.); and see *Milmo* v. *Carreras* [1946] 1 K.B. 306). Quiet enjoyment is, in the absence of express provision, guaranteed only while the landlord's interest lasts. We agree, of course, that if there should be "express provision," such a proviso as is suggested would be essential.

Chattels Settled to Devolve with Settled Land—Provision for Maintenance and Repair—Duty of Life-Tenant

Q. By the will of the testator, who died in 1900, certain chattels, including valuable pictures and books, were settled to devolve as heirlooms with a freehold estate which was devised in strict settlement. By the will it was provided that the said heirlooms should be kept properly preserved at the expense of the person for the time being entitled. The first life-tenant died in 1941. The present life-tenant has been advised that the pictures require cleaning and restoration and that a number of the books should be re-bound. The will does not specifically empower the trustees to use capital moneys arising out of the settled estate for this purpose. In *Re Countess Waldegrave; Earl Waldegrave* v. *Earl of Selborne* [1899] W.N. 240 an order was made allowing the trustees concerned to clean and restore pictures out of the proceeds of sale of heirlooms. Have the trustees any power to apply capital moneys arising out of the settled estate for the cleaning and restoration of the pictures and the rebinding of the books? It is presumed that neither of these operations will be necessary again for another fifty years or so. If the trustees have no such power, can the present tenant for life recover any proportion of the expense from the estate of the deceased tenant for life, during whose life the greater part of the deterioration of the chattels must have occurred? It should perhaps be mentioned that the will contains the usual clause absolving the trustees from responsibility.

A. We know of no power or provision under which the trustees can apply capital money for the repair and restoration of quasi-heirlooms without an order of the court, which, however, would, in our opinion, be readily granted in the circumstances of the question. Although the tenant for life has, since 1925, been a trustee of the settled property for all parties interested (Settled Land Act, 1925, s. 107), and even before 1925 was a trustee for the remainderman of chattels subject to the settlement (*Re Swan; Witham* v. *Swan* [1915] 1 Ch. 829), we do not consider that he can be held answerable for ordinary wear and tear.

Coal Industry Nationalisation Act, 1946—Exercise of Option by National Coal Board between Contract for Sale of Dwelling-house and Completion

Q. In 1947 S agreed to purchase by contract dated in March of that year a dwelling-house from a colliery company. In the negotiations for the contract a letter was obtained from the colliery company's solicitors by the purchaser's solicitors as follows: "The vendors are prepared to indemnify the purchaser in respect of the purchase-money and costs in the event of the National Coal Board giving notice under the Coal Nationalisation Act, 1946, s. 5, of their intention to acquire this property." The purchase was completed on 1st July, 1947, and S has been in occupation of the property ever since without complaint or disturbance by any person. In 1951 S asked the Coal Board to effect certain repairs necessary through mining subsidence and after considerable delay the Coal Board's legal adviser informed S's solicitors that the property belonged to the Coal Board as the Board had served an option notice in respect of this house on the colliery company under the provisions of the Coal Industry Nationalisation Act, 1946, on 19th June, 1947, and the house consequently vested in the Board. It will be observed that the sale of this house was completed by the colliery company after the service of the option notice. On being approached the colliery company have agreed to honour the undertaking given by them, but state that the extent of the indemnity would appear to be a refund of the purchase price, £200, and reimbursement of S's costs in connection therewith. The conveyance dated 1st July, 1947, was made as beneficial owner. The National Coal Board have not so far made any claim to possession of the house nor have they so far asked for rent. (1) What is S's interest in the house in the event of the National Coal Board requiring him to give possession? (2) What is S's liability for rent or any other sum for use and occupation of the house? (3) In the event of S being compelled to give possession of the house or to pay some rental for it what remedy, and to what extent, has S against the colliery company in view of the undertaking given in the solicitors' letter and under the covenants for title?

A. (1) S would appear never to have had any interest in the house which vested in the Coal Board on the date of the conveyance to S (Coal Industry Nationalisation Act, 1946, s. 5 (2)). (2) Section 5 (5) of the 1946 Act provides for the owner's liability to account for all assets for the period from the primary vesting date (1st January, 1947), to the date of actual vesting (1st July, 1947) of this particular asset pursuant to the exercise of the

option. Presumably, this liability would continue after the vesting date when the house became the property of the National Coal Board and no specific provision to that effect would be necessary. (3) In substance and having regard to the effect of the option, the transaction would appear to have been an assignment of the colliery company's claim to compensation, and the purchaser could, we think, elect to take that (with any accrued interest) or enforce the undertaking to repay the purchase price and reimburse the costs. We do not consider that the covenants for title apply since the action of the Coal Board was not that of the vendor nor does it seem to be the act of any person claiming by, through, under or in trust for him.

Leasehold Property (Temporary Provisions) Act, 1951—RENEWAL OF LEASE GRANTED IN DISCHARGE OF CLAIM UNDER LANDLORD AND TENANT ACT, 1927

Q. In 1950 our clients bought two adjoining lock-up shops, one of which was vacant, the other being subject to a lease, giving the tenant a term of seven years from a date in 1945. The lease was granted in settlement of a claim by the existing tenant under ss. 4 and 5 of the Landlord and Tenant Act, 1927, and contains a declaration that it is "granted by the lessors and accepted by the lessee in full discharge of all claims and demands (if any) by the lessee or his predecessors in title pursuant to the Landlord and Tenant Act, 1927." On the expiry of the term granted by the lease our clients wish to obtain possession of the second shop for their own use, but the tenant has now given notice of his intention to apply to the county court for the renewal of his tenancy under Pt. II of the Leasehold Property (Temporary Provisions) Act, 1951. We should like to submit that the tenant is unable to claim renewal of a lease granted under these circumstances, but can find no authority for such submission.

A. There is (we believe) no authority to support the proposed submission; but a strong case could be made by relying on—

(1) The qualifying words in s. 12 (1) of the Leasehold Property (Temporary Provisions) Act, 1951: "If in all the circumstances of the case it appears reasonable so to do." At the same time, too much should not be sought to be made of the declaration in the lease, which (*a*) was made before the Act was passed, and (*b*) would, in fact, go further than s. 5 (8) of the Landlord and Tenant Act, 1927, in that it purports to deprive the tenant of a possible right to monetary compensation.

(2) The provisions of s. 12 (3) (*e*) of the Leasehold Property, etc., Act, 1951.

Rent Restriction—TENANT A TRUSTEE LANDLORD

Q. Is there any authority for or against a trustee who has been tenant of a dwelling-house belonging to the trust estate for upwards of twenty years, the tenancy having commenced some time after his trusteeship, claiming the protection of the Rent Restrictions Acts in the event of the dwelling-house being offered for sale by the trustees (including himself)?

A. We do not know of any direct authority in this matter, but the converse position of a protected tenant becoming his landlord's executor is mentioned in Megarry's Rent Acts, 6th ed., p. 147, where the opinion is given that the tenant should not, in principle, forfeit his protection; reference is there made to *Re Mullholland's Will Trusts* [1949] L.J.R. 1078; 93 SOL. J. 148 (Ch.). There, however, a clear distinction was drawn between cases where the trustee's contractual benefit came into existence before his trusteeship and where the reverse is the position, as here, and the doctrine of *Keech* v. *Sandford* (1726), 2 Eq. Abr. 741, appears to require the trustee to hold the tenancy for the benefit of the trust.

NOTES AND NEWS

Honours and Appointments

Lt.-Col. H. M. EVERETT, solicitor, of Pontypool, has been appointed Deputy Lieutenant of the County of Monmouth.

Mr. A. N. WHISTON, who retired from the position of coroner for South Derbyshire last September, has been elected an honorary member of the Coroners' Society of England and Wales.

Miscellaneous

GENERAL COUNCIL OF THE BAR

ANGLO-FRENCH LEGAL CONFERENCE

The Third Anglo-French Legal Conference to be held since the war will take place in London from 13th to 17th July next. It will be organised by a Joint Committee composed of representatives of the General Council of the Bar, The Law Society and the Society of Public Teachers of Law.

In accepting the invitation to take part in the Conference, the French have indicated that their delegation will consist of some forty Avocats, Avoués and Professors of Law.

The following provisional working programme has been drawn up for the Conference:—

Monday, 13th July:
10.45 a.m. Opening Session.
11.30 a.m.–12.45 p.m. Discussion Groups.
(Defamation and Wills and the Administration of Estates.)

Tuesday, 14th July:
11.0 a.m.–12.30 p.m. Discussion Groups.
(Defamation and Wills and the Administration of Estates.)

Wednesday 15th July:
11.0 a.m.–12.30 p.m. Discussion Groups.
(Professional Ethics and Crime and Punishment.)

Thursday, 16th July:
11.0 a.m.–12.30 p.m. Discussion Groups.
(Professional Ethics and Crime and Punishment.)

Friday, 17th July:
11.0 a.m. Closing Session.

Papers on each of the subjects to be considered in the discussion groups are being prepared by English and French lawyers, and these will be circulated in advance so as to form the basis for discussion.

It is hoped to arrange excursions and entertainments for the afternoons and evenings.

Members of the Bar who wish to attend the Conference should communicate with the Secretary of the Council, 2 Stone Buildings, Lincoln's Inn, W.C.2, as soon as possible and in any event not later than the 1st May, 1953. Those wishing to attend should indicate whether they wish to be present throughout the Conference or, if they do not so wish, which discussions they propose to attend. They are also asked to state the extent of their knowledge of the French language.

As the Conference will necessarily have to be limited the Joint Committee may find themselves obliged to restrict the numbers attending the Conference.

A detailed programme of events, tickets, invitations, etc., will be issued as early as possible to those attending the Conference. Apart from more formal entertainment the Joint Committee hope to arrange for the French members, many of whom will be accompanied by their wives, to receive private hospitality during their visit and they will be glad to hear from any British lawyers (whether or not they intend to take part in the Conference) who would be prepared to entertain one or more French lawyers and their wives (e.g., to lunch) during the Conference. It is hoped that a list of the French delegates will shortly be available so that those in this country who may be personally acquainted with some of the visitors will be able, if they wish, to extend their invitations to them.

DEVELOPMENT PLANS

PUBLIC INQUIRY INTO MIDDLESEX DEVELOPMENT PLAN

The public local inquiry into objections to the Middlesex Development Plan will begin at Caxton Hall, Westminster, at 10.30 a.m. on Monday, 23rd March, and will continue there at 10 a.m. on subsequent days. Mr. H. G. Warren, a Senior Inspector of the Ministry of Housing and Local Government, will preside, assisted by Mr. W. A. Devereux and Mr. F. J. K. Brindley. The total of objections to the plan is about 7,000.

Printed copies of the Senior Inspector's opening statement about the conduct of the inquiry, and of the opening address by counsel for the Middlesex County Council on the plan as a whole, will be available as soon as possible at the inquiry and on

application to The Clerk of the Middlesex County Council, Guildhall, Westminster, London, S.W.1.

Objections will be heard in separate groups in the following order: (1) D-ring road; (2) South-Wales radial road; (3) Land in Potters Bar, Enfield, Southgate; (4) Land in Harrow; (5) Land in Uxbridge, Ruislip-Norwood; (6) Land in Staines, Feltham, Sunbury-on-Thames; (7) Land in Edmonton, Wood Green; (8) Land in Hendon, Wembley; (9) Land in Yiewsley and West Drayton, Hayes and Harlington; (10) Land in Heston and Isleworth, Brentford and Chiswick; (11) Land in Finchley, Friern Barnet, Hornsey; (12) Land in Southall, Ealing; (13) Land in Willesden; (14) Land in Twickenham; (15) Land in Tottenham; (16) Land in Acton.

All objectors, or their agents, who have signified their intention to attend at the inquiry will be notified of the date on which it is expected that their objection will be heard. It has already been announced that objections relating to the D-ring road will begin to be heard on Monday, 23rd March. Any inquiries by objectors or their agents relating to the arrangements for holding the inquiry should be addressed to the Clerk of the Middlesex County Council, Guildhall, Westminster, S.W.1 (Telephone: Trafalgar 7799. The appropriate extension number will be quoted on the notice of expected date of hearing).

CITY AND COUNTY BOROUGH OF LIVERPOOL DEVELOPMENT PLAN

The above development plan was, on 6th March, 1953, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the City and County Borough of Liverpool, and comprises the whole of the area of the said City.*

A certified copy of the plan as submitted for approval may be inspected at the Town Planning Office of the City Engineer and Surveyor's Department, Municipal Buildings, Liverpool 2, from 9 a.m. to 5 p.m. (Saturdays 9 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 9th May, 1953, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk at Municipal Buildings, Liverpool 2, and will then be entitled to receive notice of the eventual approval of the plan.

NOTE.—This notice supersedes notices relating to the submission of the development plan to the Minister which were published in the *London Gazette* on 16th January, 1953, and in local newspapers on 14th and 21st January, 1953.

COUNTY BOROUGH OF ROCHDALE DEVELOPMENT PLAN

On 28th February, 1953, the Minister of Town and Country Planning [*sic*] approved (with modifications) the above development plan. A certified copy of the plan as approved may be inspected at the Town Hall, Rochdale, from 9 a.m. to 5 p.m. (Saturdays 9 a.m. to 12 noon).

The plan became operative as from 7th March, 1953, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 7th March, 1953, make application to the High Court.

DEVELOPMENT PLAN FOR THE COUNTY BOROUGH OF ROTHERHAM

The above development plan was on 6th March, 1953, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the County Borough of Rotherham. A certified copy of the plan as submitted for approval may be inspected at Room 15, Borough Engineer's Department, Municipal Offices, Rotherham, from 10 a.m. to 5 p.m. (Saturdays 10 a.m. to 12 noon). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 2nd May, 1953, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Rotherham County Borough Council and will then be entitled to receive notice of the eventual approval of the plan.

* The development plan as now re-submitted to the Minister includes the area added to the City on 1st April, 1952, by the Liverpool Extension Act, 1951. Any objections or representations sent to the Minister in pursuance of the aforesaid notices of 14th, 16th and 21st January, 1953, will be treated by him as having been duly made with reference to the plan now before him, and need not be repeated.

Wills and Bequests

Mr. C. H. Giffard, solicitor, of St. Austell, left £13,064 (£2,134 net).

Mr. J. T. Goddard, solicitor, of Lincoln's Inn, left £97,643.

OBITUARY

MR. H. HALL

Mr. Harold Hall, solicitor, of Bridlington, died on 10th March. He was admitted in 1929.

SOCIETIES

The annual general meeting of the BLACKBURN INCORPORATED LAW ASSOCIATION was held on 5th March, 1953. Mr. G. F. Nuttall was elected President in succession to Mr. H. Backhouse, and Mr. R. H. G. Horne was elected Vice-President. Mr. F. G. Howarth and Mr. J. W. Hollows were re-elected Hon. Treasurer and Hon. Secretary respectively.

The 77th annual general meeting of the BRADFORD INCORPORATED LAW SOCIETY was held at the Law Library, Bradford, on 11th March, 1953, when the following officers were elected: President, Mr. J. A. W. Smith; Senior Vice-President, Mr. G. Ronald Walker; Junior Vice-President, Mr. John Duncan; Joint Honorary Secretaries, Mr. Geoffrey H. Hall and Mr. Stanley Ackroyd.

The fourth annual dinner and dance of the MID-SURREY LAW SOCIETY was held at the Berkeley Rooms, Putney, on Wednesday, 4th March, 1953. Mr. George E. Reed, the President of the Society, with Mrs. Christina Forsdike, widow of the late Mr. A. W. Forsdike, whose sudden death last year a few weeks after his election to the Presidency had caused the function to be postponed, presided. The principal guest was His Honour Judge Clothier, Q.C., and Mrs. Clothier. Other guests present were His Honour Judge Gordon Clark and Mrs. Clark, Mr. Dingwall L. Bateson, C.B.E., M.C. (President of The Law Society) and Mrs. Bateson, Mr. T. G. Lund, C.B.E. (Secretary of The Law Society) and Mrs. Lund, Mr. Gilbert Hicks, C.B.E. (Registrar, Kingston County Court) and Mrs. Hicks, Captain Bruce Humfrey, D.L. (Registrar, Epsom County Court) and Mrs. Humfrey, Lady Littlewood, J.P. (President of the West Surrey Law Society) and Sir Sydney Littlewood (member of the Council of The Law Society).

The President proposed the toast of the legal profession. His Honour Judge Clothier, Q.C., replied on behalf of the Bench and Bar, recalling his experiences as a solicitor, junior barrister, silk and judge in a speech delightful for its dry humour. Mr. Dingwall L. Bateson, C.B.E., M.C., President of The Law Society, replied on behalf of The Law Society. Dancing completed a most successful evening.

The following programme is announced by the LAW STUDENTS' DEBATING SOCIETY: 7th April, No Meeting; 14th April, "That this House regrets that it took to the Law" (an adjourned debate); 21st April, "That *Brown* v. *Allweather Mechanical Grouting Co., Ltd.* [1953] 1 All E.R. 474 was wrongly decided"; 28th April, "The Queen's Peace" an address to the Society by Sir Theobald Mathew, K.B.E., M.C., the Director of Public Prosecutions; 5th May, "That the strict settlement should have no place in modern law"; 12th May, "That the Statute *Quia Emptores* (18 Edw. 1 c. 1–3) should be repealed."

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 102–103 Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).